IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 148 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHETH DHIRAJLAL GANDALAL,DECD.THRO: HEIRS & L.RS.

Versus

JAYANTILAL PRAGJI

Appearance:

1. Civil Revision Application No. 148 of 1981

MR ASPI KAPADIA for

MR SB VAKIL for Petitioner No. 1,1/2-5

Respondents Nos. 1, 3 & 4 Served

MR DEEPAK M SHAH for Respondent No. 2/1 to 2/8

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/09/2002

ORAL JUDGEMENT

This Revision Application preferred under section 29 (2) of the Bombay Rents, Hotel & Lodging Houses Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] arises from the judgment and order dated 18th August, 1980 passed by the learned Assistant Judge, Surendranagar in Regular Civil Appeal no. 108 of 1978. The petitioners before this Court are the Appellants-Plaintiffs.

The plaintiffs are the owners of the suit shop situated at Surendranagar. The suit shop was given on rent to the defendant no. 1, a partnership firm for a monthly rent of Rs. 15=75p. The defendants nos. 2, 3 & 4 were the partners of the said partnership firm.

The plaintiffs instituted Regular Civil Suit No. 278 of 1974 in the court of Civil Judge [Sr. Division], Surendranagar. The plaintiffs claimed that the defendants were in arrears of rent for more than six months; that the notice of demand was given to the defendants on 30th May, 1974; that the defendants failed to pay the amount of rent due within one month from the date of the receipt of the notice; that the defendants had without reasonable cause put the suit shop to non-user. The plaintiffs, therefore, claimed possession of the suit shop and the arrears of rent.

The learned trial Judge under the judgment and order dated 30th September, 1978 dismissed the suit. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No. 108 of 1978 in the Court of District Judge, Surendranagar. The learned Assistant Judge, Surendranagar under the impugned judgment and order dated 18th August, 1980 dismissed the said appeal. Feeling aggrieved, the plaintiffs have preferred the present Revision Application.

Mr. Kapadia has submitted that both the Courts below have erred in recording the finding that the defendants were not in arrears of rent. He has submitted that on the date of the suit notice i.e., 30th May, 1974, the defendants were in arrears of rent for two months i.e., for the period from 24th March, 1974 to 24th May, 1974. Even after the receipt of the suit notice, the defendant no. 1-firm failed to remit the amount of arrears of rent. The amount of arrears of rent was tendered by the defendant no. 4 in his individual capacity. The defendant no. 4 as an individual, being not a tenant, tender of rent by the defendant no. 4 was bad. The plaintiffs, therefore, were justified in refusing to accept such tender. The defendant-tenant,

therefore, cannot be said to be not in arrears of rent. He has submitted that both the Courts below have lost sight of the fact that the tender of rent made by a person other than the tenant is not a good tender. He has further relied upon the reply to the suit notice Exh. 60. In the said reply, the defendant no. 4 has made a categorical statement that he individually was occupying the suit shop. Mr. Kapadia has, therefore, strenuously urged that defendants on the date of the suit notice should be held to be in arrears of rent. In the submission of Mr. Kapadia, admittedly, on the date of the suit notice, the defendants were in arrears of rent for two months. The defendants were, therefore, protected by section 12 (3)(b) of the Rent Act. The Courts below, however, have failed to examine whether the defendants satisfied the conditions mentioned in section 12 (3)(b) of the Rent Act or not. The matter, therefore, requires to be remanded to the Court below for examining whether the defendants complied with the conditions mentioned in section 12 (3)(b) of the Rent Act or not.

In support of his contention, Mr. Kapadia has relied upon an English judgment in the matter of Mackley & Anr. v. Nutting [1949 (1) All England Reporter 413]. He has also relied upon commentary on Rent Act by Mr. M.C Rayajiwala.

As far as the facts of the present case are concerned, I need not deal with the question whether the tender of rent made by the respondent no. 4 was in his individual capacity or was it on behalf of the partnership firm. I also need not deal with the question whether such tender can be said to be legal and valid or not. As admitted by Mr. Kapadia, on the date of the suit notice, the defendants were in arrears of rent for a period of two months. This fact takes the matter out of the purview of section 12 (3)(a) of the Rent Act. Mr. Kapadia has admitted that the defendants are entitled to protection under section 12 (3)(b) of the Rent Act. If the defendants are protected by section 12 (3)(b) of the Rent Act, the court is required to examine whether the conditions specified in the said sub-section are satisfied or not. In the present case, the trial court as well as the appellate court has observed that the defendants had tendered the arrears of rent in the Court before the first day of hearing and had since then paid the amount of rent regularly. The lower appellate court has in terms observed that, "the trial Court has held the defendant to be regular in paying the rent. So far as the period of appeal is concerned, Mr. Shah makes a statement at the bar that he is depositing it regularly

till now. No data is furnished before me as to how the defendant is irregular and to me unearthing of that factum is not much relevant as I have considered the defendant to be ready and willing to pay the rent under section 12 (1) of the Rent Act."

Further, the learned advocate Mr. D.M Shah appearing for the concerned defendants has placed a statement on the records of the matter. Copy of the said statement has been given to Mr. Kapadia long before. Mr. Kapadia though does not admit the correctness of the said statement, he has no material to dispute the same either. The said statement does disclose that in answer to the summons issued by the Court, the defendants deposited the amount of arrears of rent and some advance also. A perusal of the said statement discloses that all along the defendants have tendered the rent in the Court far in advance. Hence, even if I accept the argument of Mr.Kapadia, no decree for eviction can be passed on the ground of arrears of rent. As regard non-user of the suit shop, both the courts below have recorded a concurrent finding that the suit shop was not put to non-user without reasonable cause. Mr. Kapadia has not been able to dislodge the said finding recorded by the courts below.

No other ground is urged before me. The Revision Application fails and is dismissed with costs. Rule is discharged.

Sd/=

{Miss R.M Doshit, J.}

Prakash*